

FILED

DEC 11 2008

PATRICK E. DUFFY, CLERK

By _____
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

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|-----------------------|---|--------------------|
| JAMES L. LARSON, |) | CV 08-25-H-DWM-RKS |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | ORDER |
| |) | |
| MIKE MAHONEY, Warden, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Petitioner Larson, a state prisoner proceeding pro se, has filed a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. Larson, who was convicted after pleading guilty to theft and burglary, claims that he is not guilty of those offenses because he was insane or otherwise not in control of his actions at the time.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Petition as required by Rule 4 of the Rules Governing Section 2254 cases in the United States

District Courts. Under Rule 4, the Petition must be summarily dismissed "[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the District Court." If summary dismissal is not warranted, the judge must order the respondent to file an answer, motion, or other response or to take some other action as ordered by the judge.

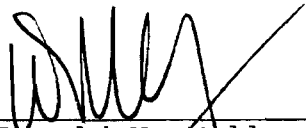
Judge Strong noted that the Petition appears to be time-barred and procedurally barred, and ordered Petitioner Larson to show cause why the Petition should not be dismissed on those grounds. Petitioner failed to respond to the Order, and Judge Strong issued Findings and Recommendations in which he concludes that the Petition should be dismissed as time-barred and procedurally barred. Judge Strong recommends denial of a certificate of appealability.

Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendations for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong's Findings and Recommendations and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED as time-barred and procedurally barred, and a

certificate of appealability is DENIED.

DATED this 11th day of December, 2008.



Donald W. Molloy, District Judge
United States District Court

